STATE OF MICHIGAN

COURT OF APPEALS

CECILIA GAMBLE-WILSON,

Appellant,

v

COMMUNITY MENTAL HEALTH and WILLIAM GAMBLE,

Appellees.

UNPUBLISHED
September 11, 1998

No. 196647
Ingham Probate Court
LC No. 96-013236

Before: MacKenzie, P.J., and Whitbeck and G. S. Allen, Jr.*, JJ.

PER CURIAM.

Cecilia Gamble-Wilson ("Wilson") appeals by leave granted two orders that appointed her father, William Gamble ("Gamble"), to be her guardian and conservator. An action was initiated by a social worker at the Ingham County Community Mental Health Center, who believed that Wilson's long history of mental illness and current erratic delusional behavior necessitated such an arrangement. The probate court found clear and convincing evidence that respondent had a mental disability that would interfere with her ability to render informed decisions regarding her person and estate. We affirm.

I. Factual Background and Procedural History

The facts underlying this case are quite unfortunate. On March 14, 1996, a social worker filed petitions with the probate court requesting that a guardian and conservator be appointed for Wilson. In these petitions, the social worker alleged that Wilson had a thirty-three-year history of mental illness that included periods of mania and delusional thought and that Wilson had been hospitalized in connection with these problems five times in the preceding six months. He also referred to Wilson's purchase of $886 worth of jewelry and a vehicle costing about $25,000 that she could not afford.

The probate court held a hearing on May 29, 1996. At that hearing, the social worker testified that Wilson was then hospitalized under a court order for a sixty- to ninety-day mental commitment and that Wilson received Social Security benefits for which Gamble was the representative payee.

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* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Wilson made a number of outbursts and wild statements during the hearing. For example, Wilson stated that she had "been communicating with the CIA" and that "calling the White House and giving them advice on international policies is right up my line." Wilson also indicated that she was at the time a union representative with the AFL-CIO, a therapist, writing a biography of a former Michigan Supreme Court justice and was making "movies and books for science research." In addition, she claimed to be working on seven master's degrees. Wilson also claimed that she had some type of "government contract with the Department of Labor, so they put me on collecting facts." Toward the end of the hearing, she indicated that she had been "poking around mental hospitals, turning in drug dealers and mafia." Wilson also claimed that she had "a boyfriend who's suing a doctor and him [sic] for putting me in the hospital this time over lies." At one point, Wilson said that she "was poisoned, my husband tried to murder me," but later during the hearing she said that she and her husband had "a very friendly relationship" – although documents in the record reflect that she actually has no spouse. Wilson also said, apparently to the probate judge, "I will have you sued if you don't allow me to sue the University of Texas for not feeding me. When I went there I weighed 180 pounds; when I came back I weighed 40 pounds."

During the hearing, the probate court decided to appoint Gamble as guardian and conservator for Wilson.

II. Appointment of a Conservator

Wilson first argues that the probate court erred in granting the petition to appoint a conservator because of a lack of clear and convincing evidence that respondent could not manage her own affairs due to mental illness or that she had property that required protection. The Revised Probate Code sets forth the procedure for appointment of a conservator, defined in MCL 700.3(5); MSA 27.5003(5) as "a person appointed by the court … to exercise powers over the estate of a protected person." Specifically, MCL 700.461(b); MSA 27.5461(b) provides:

> Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines that the person is unable to manage his or her property and affairs effectively for reasons such as mental illness, mental incompetency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; and the person has property which will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care, and welfare of the person or those entitled to be supported by the person and that protection is necessary or desirable to obtain or provide funds.

Thus, a trial court may appoint a conservator if, in pertinent part, it determines that: (1) a person is unable to manage the person's property and affairs due to mental illness; and (2) the person has property which will be wasted unless proper management is provided.

Wilson assumes that a ground to appoint a conservator must be established by clear and convincing evidence. Although the probate court did find that clear and convincing evidence to support appointing a conservator existed in this case, the Revised Probate Code provides a clear and convincing evidentiary standard only for guardianship proceedings, not for conservatorship proceedings. MCL 700.444(1); MSA 27.5444(1); compare MCL 700.461(b); MSA 27.5461(b). Accordingly, it appears to us that the factual basis to support appointing a conservator need be established only by a preponderance of the evidence.

Regardless, we assume for purposes of discussion that a clear and convincing evidence standard was applicable. We review the probate court's factual findings for clear error. MCR 2.613(C). The probate court did not clearly err by finding that there was clear and convincing evidence of the pertinent grounds for appointing a conservator. There was compelling evidence to show that respondent was unable to properly manage her own affairs because of her extensive delusional behavior. Respondent made multiple statements throughout the proceedings exhibiting her delusional behavior. Many outbursts pertained to financial matters. Examples include her claims that: (1) she is a renowned author and supports herself from this work; (2) she had a contract with the Department of Labor; (3) she expected to share in her "husband's" millions of dollars of stock investments after their divorce; and (4) she was working toward seven master's degrees. These examples suggest that respondent not only would be unable to manage her own affairs, but also that she had a deeply delusional outlook as to the exact nature of her affairs. This is reinforced by the testimony of the social worker, who indicated that Wilson had recently purchased a $25,000 automobile and $886 in jewelry, without the means to afford these items. The probate court also properly considered Wilson's thirty-three year history of mental illness, including periods of mandatory hospitalization.

Wilson also argues that no evidence was introduced that she had property that was in need of protection. However, evidence was presented to the probate court that Social Security disability benefits were paid on Wilson's behalf. Also, an inventory of respondent's estate was presented to the probate court that indicated she had approximately $18,743.30 in personal property, $12,525 of which consisted of an automobile. Accordingly, Wilson possesses a number of personal property items and an income that the probate court properly determined would be better managed by her father. The probate court did not clearly err by finding that Wilson had property in need of protection from being wasted. MCR 2.613(C).

III. Alleged Failure to Conduct an Independent Evaluation of Wilson's Competency

Wilson also argues that the probate court erred in granting the petition to appoint a guardian before respondent had an independent mental evaluation as is her right pursuant to MCL 700.443(4); MSA 27.5443(4) and that this denial of respondent's right to an independent evaluation infringed upon her right to due process.

MCL 700.443(4); MSA 27.5443(4) provides:

> The alleged legally incapacitated person has the right, at his or her own expense, or if indigent, at the expense of the state, to secure an independent evaluation. Compensation for an independent evaluation at public expense shall be in an amount that, based upon time and expense, the court approves as reasonable.

The record of the hearing at which the probate court decided to appoint Gamble as Wilson's guardian and conservator includes the following exchange:

> *The Court:* ….
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> Now, we were here last April 10th, and at that time, [Wilson's counsel], I believe you requested an independent evaluation; is that right?
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> [*Wilson's counsel*]: That's correct, your Honor.
>
> *The Court:* Has that been completed, sir?
>
> [*Wilson's counsel*]: It hasn't been complete [sic], your Honor. It was arranged with Dr. Domino, and it was arranged for April 24th at 9:30 a.m. I informed Cecilia of that time and date, she was aware of the time and date for the evaluation, and she did not appear for the evaluation.

Accordingly, the probate court properly gave Wilson the opportunity to secure an independent evaluation as required by MCL 700.443(4); MSA 27.5443(4). Under any reasonable interpretation of MCL 700.443; MSA 27.5443(4), the probate court is required to provide an allegedly legally incapacitated person with the *right* to an independent evaluation. *Vargo v Sauer*, 457 Mich 49, 58; 576 NW2d 656 (1998) (if statutory language is clear and unambiguous, its plain meaning reflects legislative intent and no further construction is permitted). In this case, the probate court fulfilled this obligation. It was Wilson who simply failed to appear for the independent examination. Contrary to Wilson's position on appeal, it would be absurd to conclude that the probate court has violated MCL 700.433(4); MSA 27.5443(4) where the court provided Wilson with the right to an independent evaluation and she simply failed to avail herself of that right. *McAuley v General Motors Corp*, 457 Mich 513, 518; 578 NW2d 282 (1998) (a statute should be construed to prevent absurd results).

Affirmed.

/s/ Barbara B. MacKenzie
/s/ William C. Whitbeck
/s/ Glenn S. Allen, Jr.